The distinction may lie in the fact that most of the water company cases were suits on *express* contracts which contemplated the supply of water to the municipality itself, while the gas company cases and those water company cases, in which recoveries are generally allowed, are on contracts providing for individual service to citizens. The principal case materially extends the doctrine by allowing suit upon an *implied* contract.

TORTS—INDUCING BREACH OF LESSOR'S RESTRICTIVE AGREEMENT.—The defendant, with knowledge of the existence of a contract between the plaintiff and a third party in which the latter agreed to restrict the sale of a certain device leased to the plaintiff, induced the third party to sell him the restricted device. *Held,* that these facts constituted a cause of action. Putnam, J., *dissenting. Gonzales v. Kentucky Derby Co.* (1921) 197 App. Div. 277, 189 N. Y. Supp. 783.

Inducing a breach of contract is a tort. *Lumley v. Gye* (1853, Q. B.) 2 El. & Bl. 216. By the weight of authority this doctrine applies to all kinds of contracts. *Knickerbocker Ice Co. v. Gardiner Dairy Co.* (1908) 107 Md. 556, 69 Atl. 405; 16 L. R. A. (N. S.) 746, note. The modern tendency is to allow an action where one "maliciously" induces a party to a contract to break it, without regard to the means employed, "maliciously" meaning the intentional doing of a wrongful act without legal justification. *Beekman v. Marsters* (1907) 195 Mass. 205, 80 N. E. 817; *Cumberland Glass Mfg. Co. v. De Witt* (1913) 120 Md. 381, 87 Atl. 927; *Lamb v. Cheney* (1920) 227 N. Y. 418, 125 N. E. 817. But what constitutes legal justification has not been definitely decided. Competition does not justify interference. *Beekman v. Marsters, supra.* Nor is it sufficient that the defendant was seeking his own economic advancement. *Read v. Friendly Society* [1902] 2 K. B. 88. Nor does the unenforceability of the contract under the statute of frauds justify interference. *Cumberland Glass Mfg. Co. v. DeWitt, supra.* The justification is seemingly governed by individual circumstances. See *Glamorgan Coal Co. v. Miners' Federation* [1905, H. L.] A. C. 239, 249. The instant case is an interesting development of the New York rule. In an early decision, the New York Court of Appeals held that no action would lie for inducing a breach of a contract of sale unless it was procured by fraud or other tortious means. *Ashley v. Dixon* (1872) 48 N. Y. 430. In a recent case in which the Court of Appeals allowed a recovery for a "malicious" interference with a contract of employment, the language used was broad enough to cover contracts in general, and in fact the Court cited cases as authorities which had allowed a recovery on contracts other than those of service. See *Lamb v. Cheney, supra.* The majority of the Court in the instant case interpreted this decision as standing for the broad proposition that a "malicious" interference with a contract of any sort was actionable, and felt safe in so doing since the lower courts of New York have repeatedly held that there is no distinction between contracts of service and other contracts in actions for procuring their breach. *DeJong v. Behrman Co.* (1911) 148 App. Div. 37, 131 N. Y. Supp. 1083; *Laskey Feature Play Co. v. Fox* (1916, Sup. Ct.) 93 Misc. 364, 157 N. Y. Supp. 106; *Turner v. Fulcher* (1917, Sup. Ct.) 165 N. Y. Supp. 282. The present decision is in accord with the modern tendency to allow a cause of action for an unjustified intentional interference with a contract of any kind. It is perhaps safe to say that the decision in *Ashley v. Dixon, supra,* would not be followed to-day by the Court of Appeals.

TRIAL PRACTICE—DISAGREEMENT OF JURY—COERCION AS GROUND FOR NEW TRIAL.—After an absence of two hours the jury in an action for personal injuries had reported agreement on liability but not on the amount of damages. They were dismissed until the next day. The presiding judge, being called away, appointed another judge to receive the verdict on the amount of damages. On being advised that the jury did not think they could agree, he told them that he had not been

asked to discharge them but to receive their verdict, that he would not feel warranted in discharging them, but would follow his rule of keeping juries together until they reached a verdict, and that the previous judge would be greatly disappointed and the whole effort of the trial would be wasted if they did not reach a verdict. He suggested a half hour's walk for relaxation and then an earnest endeavor to consider the case fully and reach a verdict. After a verdict for the plaintiff the defendant appealed on the ground that the judge's statements were coercive. *Held,* that the remarks were unwarranted and prejudicial, and that a new trial should be granted. *Texas Midland Ry. v. Brown* (1921, Tex. Com. App.) 228 S. W. 915.

Although agreed that coercion of the jury is error, the courts do not agree as to what amounts to coercion sufficient to warrant a new trial. It has been held not to be reversible error to urge a jury to agree. *Doty v. Smith* (1907) 80 Conn. 245, 67 Atl. 885; *Vinton v. Plainfield Township* (1919) 208 Mich. 179, 175 N. W. 403. Nor to remind the jury of the amount of effort spent on the trial. *Knickerbocker Ice Co. v. Pennsylvania Ry.* (1916) 253 Pa. 54, 97 Atl. 1051. Nor to keep the jury together for a long time. *Louisville & N. Ry. v. Johnson* (1920) 204 Ala. 150, 85 So. 372; *Baker v. Mohl* (1916) 191 Mich. 516, 158 N. W. 187. But it is reversible error to urge agreement in order to save expense. *Missouri, K. & T. Ry. v. Barber* (1919, Tex. Com. App.) 209 S. W. 394; *Covey v. Rogers* (1912) 85 Vt. 308, 81 Atl. 1130. Or to tell the minority to agree with the majority. *Picken v. Miller* (1915) 59 Ind. App. 115, 108 N. E. 968. Or to threaten to keep the jury a long time. *Mar v. Shew Fan Qui* (1909) 108 Minn. 441, 122 N. W. 321; *contra, Southern Ry. v. Fleming* (1907) 128 Ga. 241, 57 S. E. 481. Or to advise a compromise. *Peary v. Clemons* (1912) 10 Ga. App. 507, 73 S. E. 756; *Highland Foundry Co. v. N. Y., N. H. & H. Ry.* (1908) 199 Mass. 403, 85 N. E. 437; *contra, Smith v. Stanley* (1912) 114 Va. 117, 75 S. E. 742. Where the only question was the amount of damages, it was held not to be reversible error to refuse to discharge the jury. *St. Louis, I. M. & S. Ry. v. Devaney* (1911) 98 Ark. 83, 135 S. W. 802. This seems squarely opposed to the present decision. The test ought to be: has the judge given the jury an erroneous rule of conduct for its determination of the case? If he has there should be a new trial. *Sunshine Oil Corp. v. Randals* (1921, Tex. Civ. App.) 226 S. W. 1090. If not, the judgment should stand. *Northern Texas Traction Co. v. Brigance* (1910, Tex. Civ. App.) 128 S. W. 919. Here, it is submitted, nothing was said to the jury which it was improper for them to consider, and the judge was not attempting to force his opinion upon them.

TRUSTS—APPOINTMENT OF TRUSTEE—JUDICIAL DISCRETION.—Upon the death of the original trustees of an estate of $213,000, a member of the family was appointed as trustee, under bond of $250,000. Upon the death of the latter, all the parties in interest petitioned to have a specified trust company, which had always managed their affairs, appointed. The court, however, appointed a stranger to the parties, fixing his bond at $20,000. The petitioners thereupon again petitioned the court, stating that they had no personal objections to the appointee, that they did not even know him, but that they desired to have the trust company appointed for various reasons mentioned. This petition being denied, the plaintiffs appealed. *Held,* that the appointment of the lower court should be revoked, and the trust company appointed. *Matter of Gunther* (1921) 197 App. Div. 28, 188 N. Y. Supp. 615.

The appointment of trustees is a matter for the discretion of the court. *In re Tempest* (1866) L. R. 1 Ch. 485 (leading case). This discretion "in the best is often, at times, capricious; in the worst it is every vice, folly and madness, to which human nature is liable." See *Ex parte Chase* (1869) 43 Ala. 303, 310; *State v. Cummings* (1865) 36 Mo. 263, 278. It is generally governed by definite